IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 466 of 1997

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SANAND NAGAR PALIKA

Versus

DISTRICT COLLECTOR

Appearance:

1. Special Civil Application No. 466 of 1997

(MR ANANT S DAVE) for Petitioner No. 1

MR PK JANI for Petitioner No. 1

M/S PATEL ADVOCATES for Respondent No. 1

MR LB DABHI A.G.P. for Respondent No. 1,2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 28/12/2004

ORAL JUDGEMENT

1. The petitioner has by way of this petition challenged the order dated 5th July, 1994 passed by the

respondents, at annexure-A to the petition.

2. The short facts of the case as they emerge from the record of the petition are that the vide order dated 18th June, 1971 the lands in question were given to the petitioner. It is the case of the petitioner that in order to develop the said plots, the same were given for construction of shops. The petitioner contended that thereafter, the Administrator came to be appointed and he recommended respondent no. 1 to take over the possession of the lands in question. The petitioner further submitted that respondent no. 1 without following procedure as envisaged under the Act, passed an order dated 5th July, 1994 under the provisions of Section 80 (3) of the Act, whereby the said land in question was taken over by the Government. Hence, this petition.

3. The petitioner has submitted that the order dated 5th July, 1994 was passed by the District Collector on remarks submitted by Administrator appointed by the respondents and without proper Resolution of the petitioner Nagarpalika, the lands in question are now resumed by the State Government under Section 80 (3) of the Municipalities Act, 1963. Mr. Jani learned advocate for the petitioner submitted that it was incumbent upon the petitioner before proceeding under Section 80, to give opportunity to the Nagarpalika, namely the General Body, to pass a Resolution and present their case before the authority. In the present case, the Administrator was appointed by the State Government and the same officer has given consent for resumption of the land in question. In that view of the matter, the interest of Nagarpalika was not protected properly at the relevant time.

4. As against that Mr.Dabhi learned A.G.P. appearing for the respondent has fairly conceded that no opportunity was given before passing the aforesaid order.

5. Heard the learned advocates for the respective parties. I find force in the submission of Mr. Jani and the same is required to be considered seriously inasmuch as the property vested with the Nagarpalika was transferred with the consent of the then Administrator under Section 80 (3) of the Act, which was a valuable right of the Nagarpalika. Moreover no such procedure is followed by the authorities before passing the order, and, therefore, the said order is void.

6. Looking to the peculiar facts and circumstances of the case, in my opinion, ends of justice will be met

if the Collector, Ahmedabad, is directed to decide the matter afresh after giving an opportunity of hearing. Accordingly, the petition is allowed. The order dated 5th July, 1994 at annexure-A is quashed and set aside. The Collector, Ahmedabad shall hear the petitioner, if they approach alongwith the representation within a period of four weeks from the date of receipt of the order of this Court and on receipt of such representation, the Collector shall, after following the legal procedure, pass appropriate orders within a period of three weeks from the date of the representation. Rule is made absolute to the aforesaid extent with no order as to costs.

7. It is made clear that the present Collector shall not be influenced by the order passed by the earlier Collector dated 5th July, 1994 and shall pass order afresh independently, after considering the requirement of the petitioner Nagarpalika and their plan for development of such lands.

[K.S. JHAVERI, J.]

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